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Supreme Court, U.S.
FILED
MAY 21 1996
CLERK

No. 95-1636

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

EXXON CORPORATION,

Petitioner,

vs.

JOHN RICHARD LUDBROOKE YOUELL, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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May 21, 1996

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REPLY TO BRIEF IN OPPOSITION

For the reasons stated in the petition for certiorari ("Pet."), Exxon Corporation ("Exxon") continues to believe that this Court should summarily reverse the Second Circuit's January 12 decision because that court failed to give effect to this Court's mandate to apply *Wilton* v. *Seven Falls Co.*, 515 U.S. ___, 115 S. Ct. 2137 (1995). *See* Pet. at 10-25.[1]

Exxon here responds to one argument not addressed in the petition. Respondents claim that the court of appeals correctly refused to remand the case to the district court because the court of appeals "was actually in a better position than the district court to apply the *Brillhart* test" and that the court of appeals was "in a superior position [than the district court] to give all appropriate weight to the various *Brillhart* factors." Brief in Opposition ("Br. Opp.") at 22. Respondents thus claim that because the court of appeals "applied" "all pertinent *Brillhart* considerations," its refusal to remand to the district court was proper. Br. Opp. at 23.

Respondents are wrong. *First*, the district court applied (as it was then obligated to do under Second Circuit precedent) the *incorrect* standard established by *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800 (1976); the court of appeals was therefore obligated to permit the district court an opportunity to exercise its discretion and explain its decision under the *correct* standard established in *Brillhart* v. *Excess Ins. Co. of America*, 316 U.S. 491 (1942). Even if the district court were to reach the same result as it did under the (stricter) *Colorado River* test, a remand would permit the district court to apply all relevant

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[1] The abbreviations herein are the same as those in the petition.

factors (rather than the six specific *Colorado River* factors) and explain why it believes the action should still be dismissed under the proper standard. The district court's determination could then be reviewed for an "abuse of discretion" with the benefit of a full -- and current --, explanation of the reasoning that supports that conclusion.

Second, even if the court of appeals believed that it was in a far "superior" position than the district court to apply the correct legal standard to the facts, remand was still the appropriate remedy. A useful analogy may be found in this Court's teachings on the proper division of responsibility between appellate and trial courts regarding factual findings, which may be set aside only if "clearly erroneous." *See* Fed. R. Civ. P. 52(a). In *Anderson* v. *City of Bessemer City, North Carolina*, 470 U.S. 564 (1985), this Court considered "the theory that an appellate court may exercise *de novo* review over findings not based on credibility determinations." *Id.* at 574. The *Anderson* Court rejected the argument -- essentially the same one proffered by respondents here -- that when an appellate court is in as good a position to make the decision at issue, it is thereby free to substitute its judgment for that of the trial court. This Court stressed that the determination of fact is the trial court's "major role," subject to limited review on appeal. *Anderson* held that creating exceptions would poorly serve the litigation process, from the perspective of both the courts and the parties. *Anderson*, 470 U.S. at 574-75.

Just as Rule 52(a) vests district courts with the responsibility *in the first instance* to determine facts, the Act vests in the district courts "unique and substantial discretion" whether to exercise jurisdiction under the Act. *Wilton*, 115 S. Ct. at 2142. Contrary to respondents' arguments, a court of appeals can no more substitute its discretion for the district court's than it can substitute its factual findings for the district court's. The Second Circuit's error may be even greater, for the abuse of discretion standard that applies in

this context is at least as deferential as the clearly erroneous standard that applied in *Anderson*. *Cf. Bennett* v. *Tucker*, 827 F.2d 63, 68 (7th Cir. 1987) ("[e]ven under our most deferential standard, abuse of discretion, we cannot uphold the decision of the district court.")

This rule is particularly apt here. In the Texas Action, trial is already well underway. Exxon has concluded its presentation of the case before the jury. Respondents currently are presenting their case to the jury. Surely, the district court should be permitted to consider the practical and fluid realities of litigation between the parties in determining whether to take (or decline to take) steps in the parallel New York Action, rather than be forced to follow the court of appeals' blanket rule ordering that some types of cases *automatically require* the exercise of jurisdiction under the Act. *Wilton* plainly held that a district court should *first* decide whether to exercise jurisdiction, subject to appellate review for "abuse of discretion"; the court of appeals' refusal to follow that holding warrants summary reversal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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